

Remarks

Applicants thank the Examiner for the Interview on March 18, 2008 and are including the invention disclosure inadvertently missing from Applicants' November 26, 2007 Response. Applicants did not realize the invention disclosure was missing until this outstanding Final Office Action was issued. There is no deceptive intent and Applicants submit the enclosed invention disclosure should obviate all rejections in view of WO 01/36957 ("WO Prohaska"), the primary reference.

In addition, Applicants note the incorrect serial number in item 5 of the Affidavit submitted with the November 26, 2007 Response was a typographical error and that the correct number is 10/029,659, which is the instant application. Applicants submit this error was a mere oversight and that there is no deceptive intent.

Further, as discussed with the Examiner during the Interview, the relevant section of CFR 1.131 that addresses the substantive concerns of the Examiner in paragraph 1 of the Office Action states "The showing of facts shall be such, in character and weight, as to establish reduction to practice prior to the effective date of the reference, or conception of the invention prior to the effective date of the reference coupled with due diligence from prior to said date to a subsequent reduction to practice or to the filing of the application." Based on the discussion with the Examiner, Applicants understand the Examiner agrees with Applicants in that the invention disclosure and previously filed Affidavit together without any changes except for the typographical error specified above should overcome the rejections with respect to the WO Prohaska patent because the date of Applicants' invention predates the teachings of the WO Prohaska.

More particularly, because WO Prohaska is no longer prior art, and because none of the remaining references are relied upon by the Examiner for teaching or suggesting the step of providing a substrate, providing an opening in the substrate, placing an

electrode proximate to the opening, contacting a membrane to the substrate and electrode, a hole in the membrane, and aligning the hole with the opening for defining a gas passage, the rejections under 35 USC §103 should be withdrawn.

Because the rest of the cited art are relied upon for showing a dry ionomer membrane, a combination of these references does not result in the steps of providing a substrate, providing an opening in the substrate, placing an electrode proximate to the opening, contacting a membrane to the substrate and electrode, a hole in the membrane, and aligning the hole with the opening for defining a gas passage. Hence, even assuming that the references show what the Examiner states in the Office Action, and Applicants are not conceding this to be true, the combined references would not arrive at Applicants' claimed invention absent WO Prohaska.

In order for the combined remaining references to arrive at Applicants' claimed invention, the combined references need to be modified. However, there must be some teaching or suggestion in the cited art in order to provide motivation for one skilled in the art to make the modification. Absent such teaching or suggestion, one skilled in the art would not have the motivation to make the suggested modification and, therefore, such modification in the absence of these requisite teachings or suggestions is improper. As discussed above, the none of these references teach or suggest, and therefore neither does the combination of references, placing the electrode proximate to the at least one opening, contacting the dry ionomer membrane to the substrate and electrode, providing at least one hole in the ionomer membrane, and aligning the at least one hole with the at least one opening for defining a gas passage.

Without these requisite teachings or suggestions, there is no motivation to properly modify the cited art under 35 USC §103 and the rejections should be withdrawn. Based on the foregoing, WO Prohaska is no longer prior art to teach or suggest the steps of providing a substrate, providing an opening in the substrate, placing an elec-

trode proximate to the opening, contacting a membrane to the substrate and electrode, a hole in the membrane, and aligning the hole with the opening for defining a gas passage and the remaining references are not relied upon for showing these limitations. Therefore, Applicants submit that all claims are in condition for allowance.

Respectfully submitted,

/ Wesley W. Whitmyer, Jr./

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